

Message

From: O'Brien, Elisabeth (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MASSMAIL-01/CN=RECIPIENTS/CN=ELISABETH.O'BRIEN]
Sent: 12/28/2011 9:18:02 PM
To: Nassif, Julianne (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MassMail-01/cn=Recipients/cn=Julianne.Nassif]; Salemi, Charles (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MassMail-01/cn=Recipients/cn=Charles.Salemi]
Subject: FW: CTA1 Op [REDACTED] Conviction flipped on Confrontation Clause Grounds
Attachments: 10-1318P-01A.pdf
Flag: Follow up

fyi

From: Wortmann, John (USAMA) [John.Wortmann@usdoj.gov]
Sent: Wednesday, December 28, 2011 2:38 PM
To: O'Brien, Elisabeth (DPH)
Subject: FW: CTA1 Op [REDACTED] Conviction flipped on Confrontation Clause Grounds
Elisabeth—thought you guys might be interested in this decision.

United States v. [REDACTED]
[REDACTED]

(1st Cir. Dec. 9, 2011)

(Howard; Lipez and Siler, of the Sixth Circuit, sitting by designation)

**Defendant's Sixth Amendment Right to Confrontation
Violated When District Court Allowed a Forensic Chemist to Testify
Regarding the Results of a Drug Analysis That He Did Not Conduct.**

1. Defense counsel's objection to Morales's testimony on the grounds that someone else conducted the analysis, "so I object to the fact that he has no personal knowledge of the test being conducted" was sufficient to preserve his appellate Confrontation Clause challenge.
2. The district court erred under the Confrontation Clause when it allowed Morales to testify concerning the results of a lab test performed by Borrero in which he (Morales) was not involved, and that error was not harmless beyond a reasonable doubt, because (a) "Morales was never asked, and consequently he did not provide, his independent expert opinion as to the nature of the substance in question," but rather "parroted the conclusion of Borrero's report" and his testimony amounted to no more than the prohibited transmission of

testimonial hearsay; and (c) there was no other reliable evidence that the seized substance constituted cocaine.